IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6954 OF 2005

Tardeo Airconditioned Market Building Co-operative Society Ltd. ..Petitioner

Vs.

The State of Maharashtra and ors. ..Respondents

Mr. Y.S. Jahagirdar, Senior Counsel with Mr. A.G. Damble for petitioner.

Mr.C.R. Sonawane, AGP for respondent Nos.1 and 2.

CORAM: B.H. MARLAPALLE & NARESH H. PATIL,JJ.

Date : September 11, 2006.

P.C.:

1. Heard Mr.Jahagirdar the learned Senior Counsel with Mr.Damble for the petitioner-society and Mr.Sonawane the learned AGP for respondent nos.1 and 2.

2. The first challenge in this petition is to the constitutional validity of Section 73 (1AB) of the Maharashtra Co-operative Societies Act, 1960 and second challenge is to the notice dated 14/7/2005

issued by the respondent no.2.

3. Section 73 (1AB) of the Act which was inserted by Maharashtra 41 of 2000 and brought into force with effect from 23/8/2000 reads as under:-

"**73. Committee, its power and functions**

(1) .....

(1AB) The members of the committee shall be jointly and severally responsible for all the decisions taken by the committee during its term relating to the business of the society. The members of the committee shall be jointly and severally responsible for all the acts and omissions detrimental to the interest of the society. Every such member shall execute a bond to that effect within fifteen days of his assuming the office, in the form as specified by the State Government by general or special order. The member who fails to execute such bond within the specified period shall be deemed to have vacated his office as a member

of the committee.:

. Provided that, before fixing any responsibility mentioned above, the Registrar shall inspect the records of the society and decide as to whether the losses incurred by the society are on account of acts or omissions on the part of the members of the committee or on account of any natural calamities, accident or any circumstances beyond the control of such members:

. Provided further that, any member of the committee, who does not agree with any of the resolution or decision of the committee, may express his dissenting opinion which shall be recorded in the proceedings of the meeting and such member shall not be held responsible for the decision embodied in the said resolution or such acts or omissions committed by the committee of that society as per the said resolution. Such dissenting member, if he so desires, may also communicate in writing his dissenting note to the Registrar within seven

days from the date of the said resolution or decision. Any member, who is not present for the meeting in which the business of the society is transacted, and who has not subsequently confirmed the proceedings of that meeting, such member shall also not be held responsible for any of the business transacted in that meeting of the society."

4. The petitioner's grievance pertains to the following requirements of the said Section:-

(a) Failure of the member to execute such bond within the specified period shall be deemed to have vacated the office.

(b) One of the members not agreeing with any of the resolution or decision of the Committee, has the liberty to dissent in writing and liberty granted to him to communicate in writing his dissenting note to the Registrar within seven days from the date of the resolution or decision and such a member shall not be held responsible for the

decision embodied in the majority resolution.

5. As per Mr. Jahagirdar, the liberty given to the member to dissent will result in the mismanagement of the society and it will hit at the very root of the co-operative movement which is carried out by and large by the unanimity in passing the resolutions. It was also urged before us that the co-operative societies are the instruments of developments at the grassroot levels and, therefore, a statute providing for dissent is likely to lead in fractionalisum in the elected managing committee and thus becoming a bottle-neck to carry out the societies activities more effectively.

6. We are not impressed by these submissions. The amendment by Maharashtra 41 of 2000 was aimed at strengthening the co-operative societies. The amendment carried out in the scheme of Section 73 of the Act provides that the members of the committee are jointly and severally responsible for all their acts and for every decision relating to the business of the society. It is made mandatory for the member of the

committee to execute bond in the manner specified, on his election to the managing committee and the sole aim behind this is that the committee conducts the business of the society with due care and more responsibility. The first proviso in the amended Section clearly requires investigations into the issue of losses incurred by the society and the Registrar is required to record findings whether such loss is on account of acts or omissions on the part of the members of the committee or on account of any natural calamities, accident or any circumstances beyond the control of such members. Any member who is not present in the meeting for which the business of the society is transacted or the member who has dissented to the resolution is not held liable to account the losses suffered by the society. In a democratic set up and more so at the grassroot levels, an individual member must have the freedom to record his dissent and he cannot be forced to accept the majority view. Such a protection will be curbing the individual convictions of right or wrong in respect of any proposal/decision. To account for individual responsibility and commitments, the scheme of the statute must provide for individual accounting and,

therefore, the provision for furnishing a bond within the specified period after getting elected as the member of the managing committee has been made compulsory and failure to execute such a bond within the specified period would result in automatically vacating the office. We are of the considered opinion that the scheme of Section 73(1AB) would certainly lead to strengthen the co-operative societies and the said provisions in no way would be termed as ultra virus or against the individual rights of a member who has been duly elected on the managing committee. We, therefore, reject the challenge to the validity of Section 73(1AB) of the Act.

7. So far as the notice dated 14/7/2005 is concerned, it is necessary for the members concerned to reply to the same and we are sure that the respondent no.2 will hear the members concerned before passing any order. At the same time the members concerned may also furnish the bond before the respondent no.2. If such bond is executed within a period of one week and placed before the respondent no.2, we direct that the same be considered sympathetically but only by way of an exception and

our order should not be interpreted to be applicable for other cases of similar nature.

8. The petition is rejected.

(Naresh H. Patil, J.) **(B.H. Marlapalle,J.)**